render it a public nuisance. A mere license to carry on the business generally within the city limits will not be construed to be a license to carry on the business in an improper place or in an improper manner. We cannot hold, as a question of law, that a shooting gallery erected in a proper place, and conducted in a proper manner, is a public nuisance. On the contrary, we are of the opinion that such a gallary is not a public nuisance at common law, and, in the absence of any statute declaring it to be such, it must be considered a lawful business when carried on in a proper manner and place. The mere granting of a license by the municipal authorities to carry on a shooting gallery within the corporate limits of the city was not, therefore, a license to keep and maintain a public nuisance within said limits, and the city is not chargeable for injuries resulting from an abuse of his license by the licensee." Hubbell *v.* Viroqua, 67 Wis. 343, 30 N. W. 847, 849.

If a city is liable for not abating a nuisance in or near a public street making the street unsafe, a fortiori should it be liable for creating such a nuisance through its agents and employees, whether acting ultra vires or no. City of Richmond *v.* Smith undoubtedly supports this. J. F. M.

WOOLFOLK *v.* GRAVES.

(Richmond, January 25, 1912.)

Appeal from Circuit Court of Spotsylvania county. Upon a rehearing. Affirmed.

Gordon & Gordon and *S. P. Powell,* for the appellants.

Carter & Carter, for the appellees.

PER CURIAM: A decree was rendered in this cause on the 12th day of January, 1911, which upon a petition to rehear was set aside. (For this opinion, see ante, p. 76.)

As said in the opinion disposing of the case on the former hearing, "the appellants set up their own title to the land in question in their answer, and made a fruitless effort to support it by evidence. They nowhere denied the trespasses committed and threatened by them, as charged in the bill, nor did they attempt to meet the charge of insolvency, fully sustained by the proof of appellees."

Upon a careful consideration of the case upon the rehearing, the conclusion is irresistible that appellants not only failed to make out a prima facie title to the land upon which the trespasses were committed and threatened, but their assertion of title is not bona fide; therefore they are not entitled, as has been so earnestly pressed in argument, to a trial of the issue by jury. Moorman & Hurt *v.* City of Lynchburg, just decided by this court.

For the reasons given and the authorities cited in this and in the opinion of this court filed at the former hearing of the case, the decree entered at that time is approved and will be adhered to. Affirmed.